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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,926	12/09/2003	Philip J. Robinson	18388 USA	6652
27081	7590	11/01/2007		
OWENS-ILLINOIS, INC. ONE MICHAEL OWENS WAY, THREE O-I PLAZA PERRYSBURG, OH 43551-2999			EXAMINER SMALLEY, JAMES N	
			ART UNIT	PAPER NUMBER
			3781	
			MAIL DATE	DELIVERY MODE
			11/01/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/731,926

Applicant(s)

ROBINSON, PHILIP J.

Examiner

James N. Smalley

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3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-9, 11 and 14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-9, 11 and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 2-6, 7-9, 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vassallo US 6,640,987 in view of Biesecker et al. US 2004/0222181 and in view of Briere et al. US 5,836,466.

Vassallo '987 teaches a container neck with external threads and locking lugs with a radially extending side and a tapered side, and, a child-resistant cap comprising concentric inner and outer sidewalls, with a threaded internal sidewall and diametrically opposed lugs comprising a U-shaped recess/indentation as best seen in figure 5.

The reference fails to teach a container having a shoulder between a container neck and body.

Biesecker '181 teaches a container having a shoulder portion roughly located at (70). It is known shoulder portion, which is essentially a taper between a thinner neck and a larger body.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Vassallo '987 providing a shoulder between the neck and body, motivated by the benefit of allowing the container to be formed to a larger diameter than the neck and thus increasing the volume of the container. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

The reference also fails to teach squeeze pads on the closure. However, Vassallo '987 does teach in column 3, lines 63-66 that the location to squeeze the closure during removal is at the location of the arrows in figure 4 which are located such that they are on an axis perpendicular to an axis through the closure locking lugs.

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Briere '466 teaches squeeze pads (122, 124) combined with knurls (126). One of ordinary skill will recognize squeeze pads serve the dual function of indicating to a user the precise location where one may squeeze the closure in order to disengage the locking lugs from the container lugs, and, providing a location for gripping means which will help prevent slipping.

It would have been obvious to one having ordinary skill in the art to provide the squeeze pads taught by Briere '466 to the closure of Vassallo '987, motivated by the benefit of clearly indicating to a user where to squeeze, along with providing means to prevent slipping while squeezing the closure during removal.

Regarding the term "arcuate path", Examiner notes Applicant's instant figure 8, whereby it can be seen that there is an arcuate portion between the closure lugs and the closure sidewall, but that there is a flat portion which extends toward the lug distal end, such that the entire inner portion/U-shaped recess is not fully arcuate. Examiner asserts the same structure is found in Vassallo '987 as seen in figure 5, and suggests Applicant amend the claim to better define the structure of the entire closure lugs.

Regarding claims 8-9, Vassallo '987 column 2, line 21 teaches the closure is formed of polypropylene.

Regarding claim 11, Vassallo '987 column 4, lines 63-65 teach the closure may contain sealing liners to seal with the container neck.

Regarding claims 4-5, the reference fails to teach a portion of the sidewall joining the top panel being tapered inwardly with respect to an underlying portion of the sidewall.

Biesecker '181 teaches the sidewall portion (30) tapering outwardly from the top wall (25) towards a lower sidewall portion which is also tapered outwardly, but to a lesser degree. Tapering reduces the dimension of the top wall which allows a reduction in material usage.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the closure cap of Vassallo '987 forming it with a portion tapering inwardly with respect to an underlying portion as taught to be known by Biesecker '181, motivated by the benefit of reducing material usage. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

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Regarding claim 6, Examiner reads the radially-thicker squeeze pads as the radially thicker portion, since they are located in the underlying and outwardly-extending region of the closure.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1-9, 11 and 14 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

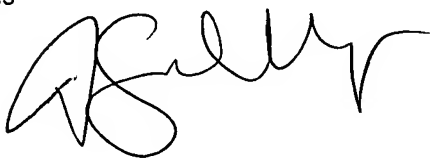
Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on Monday - Friday 10 am - 7 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jns

A handwritten signature in black ink, appearing to be 'jns' or similar, written in a cursive style.

10/22/2007

A handwritten signature in black ink, appearing to be 'Anthony D. Stashick', written in a cursive style.

ANTHONY D. STASHICK  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700